

78-0.730/2

Pro Legislation

STAT MEMORANDUM FOR:

SUBJECT : S.2525

STAT REFERENCE : Memo and Attachment

1. This memorandum contains my views on a few of the key items of the new legislation. I have keyed them to the pertinent paragraphs in the attached referent memorandum.

2. Re item 21, the Agency had proposed the following as an addition to Section 441(d)(1):

"The Agency may, under such regulations as the Director may prescribe, provide housing to employees in foreign areas, or pay allowance in lieu thereof, including the rental, purchase, sale, exchange or other disposition of residential property; provided, that the proceeds of the sale or disposition of any such property may be used only for the purchase of other property;"

This language was omitted in S.2525, and I recommend that the Agency take the position that it must be included. All agencies with personnel overseas have the authority to provide housing, and we particularly need the flexibility to provide housing in a manner consistent with different cover arrangements. The provision that the proceeds of the sale of residential property be applied to the purchase of new residential property is highly desirable. The Department of State has this authority, and

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[REDACTED]

authority to acquire housing. Again, the committee included this general authority for NSA in Section 621(a)6, page 238, and I do not see why they would object to providing us the same authority. You might examine Section 421(a)(5) to determine whether residential property could be covered under this provision. In the absence of specific authority, our present policy in [REDACTED] could be challenged. We cannot afford to rely entirely on the Title V authorities because that legislation is managed within the Department of State. Exceptions and adjustments are easily obtained inside the Department, but the published regulations make no provision for exceptions to be approved except under delegation from State. The position I have taken applies only to residential property, not all property as suggested in item 21. We and State already have the authority, for example, to apply the proceeds of the sale of cars to replacement. Except for residential property, I defer to the Office of Logistics and Finance. I doubt that we could get authority as broad as you suggest in note b to item 21, but there is a precedent for such authority in housing.

3. Re item 44. In our earlier correspondence with the Committee we proposed the addition of the following:

"Notwithstanding the provisions of subsections (b) and (c) of this section, and under regulations approved by the Director, the Agency may pay benefits in lieu of those specifically authorized, or may grant special quarters, cost-of-living and representation allowances and travel expenses when it is determined by the Agency that such are necessary for reasons of operational necessity or security."

S.2525 does not include this language, and Mr. Raffel's letter of February 21 indicates that the omission was intentional. I strongly recommend that the Agency take the position that this language, or something similar, must be included. However, I think Raffel's point is well taken with respect to the "operational necessity or security" proviso. I think we should delete this and substitute "when necessary to accomplish the mission of the Agency." In many cases operational necessity and security

may not be a consideration. This is, in effect, a matter of managerial flexibility which any agency head should have, and it is not unique to us. The Department of State has similar authority (Section .013, Standardized Regulations, Government Civilians, Foreign Areas), and they use it frequently. In fact, the Secretary of State can redelegate the authority to other agencies. Further, the Committee has included comparable language for NSA in Title VI Section 625(b)(1) of the Act. We frequently are required to pay special allowances and it is essential that we retain the authority to do so. It is my understanding that the language contained in Section 425(a) is not broad enough to cover this type of expenditure. The language actually contained in Section 441(d)(1) does not authorize the payment of different allowances, but only the use of alternate channels of paying the Standardized allowances.

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4. Re item 31. In earlier correspondence we recommended to the Committee that language be added to Sec. b(25)(a) which would state:

"...funds can be expended to carry out the functions authorized by this act and for activities of an extraordinary or emergency nature, not otherwise authorized by this act, when such expenditures are approved in advance by the Director of National Intelligence pursuant to the authority in Sectionof this Act"...

However, the language actually included in the legislation states that "sums made available to the Agency by appropriations or otherwise may be expended for purposes necessary to carry out the lawful functions of the Agency." On the basis of our conversations, it would appear that the language in S.2525 is in fact far more restrictive than it might appear to be. I recommend that our position be that the Agency must have authority equivalent to that which now exists in Section 8b and that the language proposed earlier or that included in note a, page 8 of the referent memorandum, be used. A few months ago OGC compiled, for the House Appropriations Committee, a listing of the more significant Section 8b expenditures over the past two years. In addition, I

have attached lists of other types of payments which must be continued. Other actions which we now handle under various authorities, and which we must consider, are the various activities approved by the DCI and the DDA under [REDACTED]

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[REDACTED] as well as the Agency's housing policies described in [REDACTED]. We should note that, here again, the Committee has included for NSA the type of authority we had requested for CIA. (See Section 625 (b)(1), page 247.) The authority for the Director NSA to expend funds for confidential, emergency, or extraordinary expenses requires only the approval of the Secretary of Defense and an allocation of funds from him. The general delegation to the Director of National Intelligence in Title I, Section 122(b) and similar language in Section 425(b) Title IV applies only to accounting procedures, not expenditure authority. It is essential that some type of Section 8b authority be retained, although it could be incorporated in some section other than those previously considered. We should also continue to distinguish between this authority, which is based on operational, cover or security factors, and the authority discussed in paragraph 3 which is based on the requirement for management flexibility which any head of agency must have. Both are needed, but if you could combine them there would be no objection. The Office of Finance has noted that we should be careful not to regard the NSA authority in Section 625(b)(1) as a complete model, since a separate appropriation for this is provided for the Secretary of Defense and we would not want to be placed in the position of asking for separate appropriations.

5. Re item 43. I agree that the 60 day waiting period is unreasonable, particularly when one realizes that it is added to the period of time it will take to work an Executive Order through the system. This could mean that other agencies will have a benefit for five or six months before we are able to apply it to our employees. I do not see why concurrent notification to the Congress would not suffice, and the action could be rescinded if it is inappropriate.

6. Re item 42. I have no objection to the language in note b if OGC says that this will meet our requirements.

7. Re item 41. No objection to a or b. I also have no objection to the language in item 16, and it could be very helpful. I agree with your comment in item 17.

8. Could you please affirm that S.2525, as presently written, contains the authority for us to adopt the educational travel entitlements of the Foreign Service.



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28 FEB 1979

STAT MEMORANDUM FOR: [REDACTED]
SSA/DDA

STAT FROM: [REDACTED]
Director of Finance

SUBJECT: Section 8 Authorities

On the basis of your request to [REDACTED] this morning, we have made a hurried review of areas of Agency activity which are conducted on the basis of the Director's special authorities under Section 8. The list which follows is responsive to that request -- we do not intend it as a complete list and have not had time to confirm in every instance that the activity listed is in fact dependent upon Section 8 Authority. The items listed are without regard to provisions of pending legislation.

1. Various vouchered payroll deductions, i.e. WAEPA, UBLIC and VIP.
2. Voluntary Investment Plan.
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. Advances - The Agency provides employees advances on a broader basis than other Government agencies, i.e. advances for early return of dependents prior to qualification of employee.
7. Overseas Dependent Medical Program.
8. [REDACTED]
9. [REDACTED]

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10. Supplemental Living Quarters Allowance

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11. Retirement travel - Civil Service and CIARDS.

12. Supplemental Quarters Allowances -

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13. Government furnished household goods (refrigerators, stores, transformers, etc.).

14. QP Vehicles.

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15.

16. Subsidies.

17. Termination bonuses for certain contract personnel.

18. Student travel and death gratuity benefits available to Department of State

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19. Shipment of foreign made vehicles to U.S. at Government expense when employee draws transportation allowance for six months or more.

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20.

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21. DDA authority under

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a.

b.

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25.

SUBJECT: Section 8 Authorities

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Item 32

Denial of employee right to designate additional allottee financial institutions for salary (law permits up to two allotments--Agency for security reasons allows only one and that is limited to the Credit Union).

27 FEB 1978

MEMORANDUM FOR: Special Support Assistant to the DDA

FROM:

[REDACTED]
Executive Officer, OL

SUBJECT: Office of Logistics (OL) Activities
Under Section 8

1. Pursuant to your telephone request, below is a list of some of the key OL activities which derive their authorities from Section 8 of the existing CIA Act. This is not a clear-cut issue inasmuch as the DCI's sources and methods authority, cited elsewhere in the Act, also has an authorizing impact. Additionally, OL will provide to the Office of Legislative Counsel an analysis of Senate Bill S. 2525 during the week of 27 February, which will assess the proposed bill's impact on OL activities.

2. Section 8 authorized activities are as follows:

a. Payment of SLQA under [REDACTED]

b. Waiver of Certificate of Necessity
[REDACTED] where renovation costs of building exceed 25 percent of annual rent.

d. All construction activities outside of GSA or other federal constructing authorities.

e. Avoidance of GSA prospectus procedures for projects over \$500,000.

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SUBJECT: Office of Logistics (OL) Activities Under Section 8

h. Procurement of printing equipment required for operational purposes without Joint Committee on Printing (JCP) approval (Title 44, U.S.C.).



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- j. Operation of a motor pool.
- k. Operation of a printing plant.
- l. Operation of the Executive Dining Room.

3. As noted above, OL will provide a detailed analysis of S. 2525. The paragraph 2 list is not all-encompassing but should provide sufficient examples to substantiate the need for special enabling legislation.



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27 FEB 1978

MEMORANDUM FOR: Deputy Director for Administration

FROM : F. W. M. Janney
Director of Personnel

SUBJECT : Section 8(b) Authorities, CIA Act of 1949

1. In response to the DDA's request, forwarded herewith is a list of practices and policies under the purview of the Office of Personnel based on the DCI's authorities under Section 8(b), CIA Act of 1949.

2. The limitations in Section 441(d), page 29, of the Charter Legislation would seriously impact on the payment of allowances and other benefits, provided to both staff and contract personnel, which are in excess of those authorized in Chapters 57 and 59 of the Title 5, U.S. Code.

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4. Also listed are various other practices which have been adoptions of similar benefits in other government agencies but which are not common to all and which we believe are specifically provided for in the individual agency legislation. The time frame for this response has not allowed for the necessary research to verify these assumptions.

5. We have assumed the provisions of Section 421(j) carry the same authorities as our present Act for invitee or applicant travel. As cited in OGC 75-2174, the Commission has excepted agencies where "the duties of recruitment and selection are imposed on the employing agency" from the provisions of FPM Letter 571-66 which limits payment of invitee travel expenses to a few high grade or unique positions.

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for F. W. M. Janney

Att.

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SECTION 8(b) AUTHORITIES
CIA ACT OF 1949

Benefits and Services

[REDACTED]

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Employee's Activity Association

Sports Program - Health Room, etc.

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[REDACTED]

Centralized service for arranging personnel travel and movement of HHE.

Payment of per diem for overseas out-patient medical travel, not including hospitalization.

Retirement Activities

Retirement relocation benefits

External employment assistance.

Allowances and Benefits

Quarters Allowance in excess of standard rates

Fix-up costs of Quarters.

Transportation Allowance.

Furnishing QP furniture and automobiles.

Representation Allowances

Advance Funds for Refundable School Bonds

Emergency Visitation without deductible

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Allowances and Benefits (Continued)

Casualty Plan, Special Payments

Higher Differential in Special Cases, e.g.,

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Equalization Allowance

Education Allowance in excess of standard rates

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TIA/SPA paid in excess of 90 days

Payment of Unemployment Compensation

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not suspended

Shipment of excess HHE if keeping with cover

Others

Pay allowances and differentials to foreigners

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Separation compensation for contract employees

Bonuses for contract employees

Independent Contractors under personal service contracts vis procurement

Purchase of insurance policies for independent contractors

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Allowances paid

Others (Continued)

Authority to pay in excess of government schedules. (There has been one in excess of EP 1.)



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Premium Pay

Limitation on payment of overtime

Eight hour contribution by GS-12 and above

Impact on Nonstandard Work Week based on 80 hour pay period (FPMs provide overtime on basis of 8 hour day or 40 hour week).